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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,507	12/19/2006	Akihisa Inoue	053128	4427
38834	7590	01/21/2011	EXAMINER	
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP			ZHENG, LOIS L	
1250 CONNECTICUT AVENUE, NW			ART UNIT	PAPER NUMBER
SUITE 700			1733	
WASHINGTON, DC 20036				
NOTIFICATION DATE		DELIVERY MODE		
01/21/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentmail@whda.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/552,507	INOUE ET AL.
	<b>Examiner</b> LOIS ZHENG	Art Unit 1733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 June 2010.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2 and 4 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2 and 4 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsman's Patent Drawing Review (PTO-215)  
 3) Information Disclosure Statement(s) (PTO-SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 21 June 2010 has been entered.

### ***Status of Claims***

2. Claims 1 and 4 are amended in view of applicant's response filed 21 June 2010. Claim 3 is canceled. Therefore, claims 1-2 and 4 are currently under examination.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baiker et al. US 4,916,109(Baiker), further in view of "Crystallization of amorphous Zr-Ni alloys in the presence of H<sub>2</sub>, CO, O<sub>2</sub>, N<sub>2</sub> and argon gases", Aoki et al., Journal of Materials Science, Vol. 21 pages 793-798, 1986(Aoki).

Baiker teaches a process to form an amorphous palladium zirconium oxide material, such as Pd<sub>33</sub>(ZrO<sub>2</sub>)<sub>67</sub>, used as a catalyst for oxidation of CO (abstract, col. 1

lines 55-57), comprising forming an amorphous PdZr alloy by melting and rapid cooling at a cooling rate of  $10^6$ - $10^9$ °C/s (col. 1 lines 58-64), followed by heating the PdZr alloy in an oxygen-containing gas stream at a temperature between 150-350°C to activate the PdZr alloy, which results in palladium particles in ZrO<sub>2</sub> matrix (col. 2 lines 14-33).

Example 2 of Baiker further teaches that a Pd<sub>33</sub>Zr<sub>67</sub> alloy is activated in an air stream at a temperature of 280°C (col. 5 lines 16-19, 53, Tables 1-2, col. 3).

Regarding claims 1 and 4, Baiker does not explicitly teach the claimed third metal M in the alloy composition.

Aoki teaches that zinc based alloy such as ZnNi and ZnPd amorphous alloys absorbs considerably quantity of hydrogen and also acts as catalyst for hydrogenation of carbon monoxide (introduction). Since ZnNi and ZnPd are functionally equivalent hydrogen absorbing material and catalyst material, one of ordinary skill in the art would have found it obvious to have partially substituted Pd with Ni (i.e. use a combination of Pd and Ni) in the ZnPd metal alloy of Baiker and achieve the same expected success of obtaining a hydrogen absorbing material and/or a catalyst material. In addition, such a substitution would have produced a ZrPdNi alloy with a composition that at least overlaps the claimed ZrPdNi composition. Therefore, a *prima facie* case of obviousness exists. See MPEP 2144.05. The selection of claimed ZrPdNi composition range from the disclosed range of Baiker in view of Aoki would have been obvious to one skilled in the art since Baiker in view of Aoki teach the same utilities in their disclosed ZrPdNi composition range.

In addition, since Baiker in view of Aoki teach a ZrPdNi alloy forming process that is the same as claimed and uses a ZrPdNi alloy material that is substantially the same as claimed, one of ordinary skill in the art would have expected the ZrO<sub>2</sub> matrix formed by the process of Baiker in view of Aoki to be ultrafine particles as claimed. Since Aoki teaches ZnNi and ZnPd are good hydrogen storage materials, one of ordinary skill in the art would have found that the ZrPdNi alloy derived from the teachings of Baiker in view of Aoki is capable of functioning as a hydrogen storage alloy, and can be stored in a hydrogen storage container as claimed.

Regarding claim 2, since Baiker in view of Aoki teaches a substantially the same alloy composition and is produced by the same heat treatment step and forms the same amorphous alloy with dispersed ultrafine metal and ZrO<sub>2</sub> particles as claimed, one of ordinary skill in the art would have expected the amorphous hydrogen storage alloy material of Baiker in view of Aoki to have substantially the same hydrogen storage amount of 2.5 wt% or more in a weight ratio relative to Pd contained in the hydrogen storage alloy material as claimed.

***Response to Arguments***

5. Applicant's arguments filed 21 June 2010 have been fully considered but they are not persuasive.

In the remarks, applicant argues that Aoki discusses how amorphous ZrNi alloy is suitable as a catalyst for hydrogenation of Co, and Aoki does not teach that Ni and Pd are equivalent or interchangeable since Aoki only teaches ZrNi and ZrPd amorphous

alloys absorb considerable quantity of hydrogen and act as catalysts for the hydrogenation of carbon monoxide.

The examiner does not find applicant's argument convincing because Aoki's teaching shows that ZrNi and ZrPd alloys are both highly hydrogen absorbing materials and are both catalysts for CO hydrogenation, one of ordinary skill in the art would have realized that ZrNi and ZrPd alloys are functionally equivalent materials since they both performs the same functions such as absorbing/storing hydrogen and accelerating CO hydrogenation. As set forth in MEPEP 2144.06, combining or substituting equivalents know for the same purpose is *prima facie* obvious. Therefore, one of ordinary skill in the art would have found it obvious to have partially substituted Pd in the ZrPd metal alloy of Baiker with Ni, or combine ZrNi of Aoki and ZrPd of Baiker and achieve the same expected success of obtaining a hydrogen absorbing material and/or a catalyst material. Additionally, Aoki's discussion of ZrNi alloy as a catalyst for hydrogenation of Co is not a negative teaching against Aoki's teaching of ZrNi and ZrPd as materials known for the same purpose.

In addition, the examiner has discovered following supporting documents demonstrating using metals such as Zr with Pd and Ni together are known in the hydrogen storage alloy art:

Grasselli et al. US 4,728,580(Grasselli) teach an amorphous hydrogen storage alloy of formula  $A_aM_bM'_c$ , wherein A can be Pd, M can be Ni, and M' can be Zr(abstract). Example 14 of Grasselli further teaches a  $Pd_aNi_bZr_c$  alloy wherein Zr, Pd and Ni are used together in a hydrogen storage alloy.

Gamo et al. US 5,490,970(Gamo) teach a hydrogen storage alloy having a formula  $Zr_aNi_{\beta}M_y$ , wherein M can be Pd(col. 5 lines 51-62).

Therefore, applicant's arguments are not convincing.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LOIS ZHENG whose telephone number is (571)272-1248. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lois Zheng/

Patent Examiner